

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-8 and 15-19, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,096,014 to Haffner et al., (hereinafter Haffner")in combination with WO 99/41310 to Borealis Polymer OY, (hereinafter "Borealis '310"). This rejection is issued as either Haffner in view of Borealis or Borealis in view of Haffner.

The rejection stands as per reasons of record.

It is noted, the all previous office actions, the alternative rejection were issued, i.e., using either Haffner or Borealis as the primary reference. See specifically, Office action Dated 3-27-2008, page 4, third full paragraph.

With respect to the amendment to the claims requiring the claimed product to be a "breathable film", this limitation is disclosed in Haffner and was discussed with respect to the same limitation previously recited in claim 17. Insofar as the amendment to the changing "another olefin based polymer" to "an [sic] propylene homo or copolymer", it is noted that the presence of this component is NOT required by any of the pending claims.

### ***Response to Arguments***

Applicant's arguments filed 1-20-2010 have been fully considered but they are not persuasive.

The applicants argue that Haffner does not suggest using polymers of Boreals in breathable films, and that Heffner, in fact, teaches that breathable films should be only made from metallocene based polyolefins and should not be made from Ziegler Natta polymers. The applicants state that "Haffner also tries to make a breathable film from a blend of Ziegler Natta polymers. In table II, film B is a blend of different unimodal ZieglerNatta polymers and an additional LLDPE. Film B has good WVTR and tensile strength i but it cannot be stretched. ....For breathable films, therefore, Haffner teaches away from the use of Ziegler Natta polymers as they do not meet the requirements for stretching, which Haffner requires."

First of all, the Haffner does not "try" to make breathable films from Ziegler Natta polymer, it actually makes it. The films of example B of Haffner are uniaxially stretched 4.25 times, just the same way as all other examples, including the preferred illustrative examples. Thus, the reference actually discloses the breathable films made from non-metallocene polyolefins. As stated by the applicants, those films exhibit some very good properties (such as WVTR), and some inferior properties, such as stretching in TD.

As discussed in the previous office action, the applicants, once again, concentrate on the preferred embodiments of Haffner as desirable, comparative examples as being "teaching away" from using Ziegler Natta catalyzed polyolefins, and on teachings of Borealis as not teaching breathable films. Again, it is the examiner's

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position that the applicants concentrate on negative teachings and teachings of references taken alone and not combined teachings of the two cited references.

Specifically, the applicants state that Haffner teaches use of metallocene catalyzed polyolefins and not Ziegler Natta catalyzed polyolefins. The examiner already stated on the record that she does not dispute the fact that the **preferred** (or inventive) embodiments, and all claimed embodiments, of Haffner, indeed, concentrate on the advantages of using metallocene polymerized catalysts. However, as previously discussed, the reference also exemplifies use of non-metallocene catalyzed (Ziegler Natta) polyolefins. Again, as previously discussed, while some of the properties of the films containing Ziegler Natta polyolefins are inferior as compared to the preferred metallocene polyolefins the other properties are better. More importantly – the films containing Ziegler Natta polyolefins *are obtained and tested* Haffner. This hardly constitutes teaching away. This constitutes, for an ordinary artisan, an expressed teachings that such films can, in fact, be obtained, exhibit disclosed properties, and, while may not be desirable for applications requiring high elongation properties in cross-machine direction, are still very usable and desirable for application requiring high WVTR and CD tensile strength. In addition, it is a common knowledge in the art that Ziegler Natta polyolefins are cheaper than metallocene polyolefins.

Thus, it is very clear from the teachings of the Haffner reference that exemplified non metallocene polyolefin based films do not constitute teaching away and one of ordinary skills in the art would clearly appreciate the advantages and disadvantages of

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using such films, rather than completely "giving up" on them as not usable simply because they exhibit one property that is not desirable for a particular application.

It is also noted that the examples of Haffner include use of Ziegler Natta polyolefins and small amount of polypropylene based elastomer (Himont) in example G. As clearly eviden from that example, a small amount of another polyolefin (as allowed by the claims) results in breathable films based on Ziegler Natta polyolefin, which films have good elongation properties, but decreased WVTR. Thus, the teachings of Haffner alone provide an ordinary artisan with a wealth of information on how the films with desired properties for a particular application can be obtained by optimizing amounts and types of the underlying polyolefins. Teachings of Boreals brings yet another dimension or parameter to the teachings of Haffner by disclosing that yet another improvements in film properties can be obtained by using bi-modal Ziegler Natta polyethylenes, which polyethylenes of Boreals may be either substituted for metallocene polymers of Haffner, or, yet, used in combination of those or other polyolefins disclosed in comparative and illustrative examples of Haffner to optimize the overall properties of the final breathable films disclosed in Haffner.

It is noted, that contrary to the applicants statement, the presence of another LLDPE or another polyolefin or, for that matter any other components is NOT precluded by the open claim language. Therefore, as previously discussed, use of polyolefins disclosed in Boreals in composition of Haffners (alone or in combination with another metallocene or any other disclosed polyolefins) is still considered to have been obvious for at least a simple reason of optimization of the final properties of the breathable films.

The applicants further argue that no improvement in WVTR is expected by combining LLDPE and bimodal polymer as evidenced by example 9 of the instant application. It is noted, that while some of the illustrative examples in the instant application (examples 5 and 6) do exhibit high WVTR, the other, such as example 8, which only contains the claimed bimodal polyolefin and is the closest example to the referenced example 9, WVTR very comparable to the WVTR exhibited by example 8, which is within the scope of claimed invention. Note that no WVTR is reported for example 7 at all.

Arguments regarding the alternative rejection with Borealis as the primary reference are notable absent from the applicants remarks.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/  
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